

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Establishment of Rules Governing Procedures to)	
Be Followed When Informal Complaints Are Filed)	CI Docket No. 02-32
by Consumers Against Entities Regulated by the)	
Commission)	
)	
Amendment of Subpart E of Chapter 1 of the)	CC Docket No. 94-93
Commission's Rules Governing Procedures to be)	
Followed When Informal Complaints Are Filed)	
Against Common Carriers)	
)	
2000 Biennial Regulatory Review)	CC Docket No. 00-175

COMMENTS OF VERIZON¹

The Commission should not change the time period for relating back of formal complaints. To do so would substantially increase defendants' exposure to damages and create uncertainty over a far longer period than is the case under the present rule. Under the proposal, which would start the clock for filing a formal complaint from the time of the Commission's resolution of the informal complaint, the statute of limitations period would be open-ended and could vary substantially in cases that otherwise would be indistinguishable. In addition, because informal complaints often do not contain a full description of the defendant's alleged violations and do not require the kind evidentiary support and legal analysis required in the formal complaint process, a defendant may not receive adequate notice of the potential claims against it. In the case where the Commission takes a substantial period of time to resolve the informal

¹ The Verizon telephone companies ("Verizon") are the local exchange carriers affiliated with Verizon Communications Inc. listed in Attachment A.

complaint, this lack of notice would be highly prejudicial and could deprive the defendant of its due process rights.

The Commission here proposes to change the period for filing a formal complaint that, for statute of limitations purposes, relates back to the date when the informal complaint was filed. *Memorandum Opinion and Order and Notice of Proposed Rulemaking*, 17 FCC Rcd 3919, ¶ 22 (2002) (“Notice”). Today, a complainant must file a formal complaint within six months of the date when the defendant carrier files its response in order for it to relate back. *See* 47 C.F.R. § 1.718. The proposal would extend that until sixty days after the staff has informed the parties in writing of its disposition of the informal complaint. Notice at ¶ 22.

This proposal, if adopted, could extend a carrier’s liability and the uncertainty surrounding a complaint for an open-ended period that often lasts many months, or even years. For example, the Commission recently informed Verizon that it was closing out nearly 700 informal complaints that had been filed in 1999 and which Verizon had answered that year. None of the complainants filed a formal complaint during the intervening three years, so Verizon could be certain that the issues were already closed and would have no reason to expect even the possibility of a large potential liability. The new rule would hold open the possibility that as many as 700 formal complaints could now be filed which would relate back nearly five years – two years prior to the time the informal complaints were filed. There is no public interest justification for subjecting carriers unnecessarily to this type of exposure simply because of delays in disposing of informal complaints, as the Commission here proposes.

Furthermore, because the Commission is not constrained to resolve an informal complaint within any particular time period, the current proposal also subjects potential complainants and defendants to varying statute of limitations periods for cases that otherwise are

indistinguishable. For example, if a complainant files an informal complaint and the Commission resolves it one month after it is filed, the complainant will have essentially only a three-month period to file its formal complaint. The period for which the defendant would be exposed to liability likewise is extended by only three months. In contrast, if the Commission does not resolve the informal complaint until ten months after it is filed, the complainant in that case will have had a year to file the formal complaint, and the defendant's potential liability period will have been extended by a year. Absent a corresponding rule that requires the Commission to resolve informal complaints within a definite time period, which is not suggested here, the current proposal could produce very different results. There simply can be no justification for this kind of variance for complainants or defendants.

The differences between the informal and formal complaint rules also shows why extending the date would place the defendant carrier at such a disadvantage that it could be deprived of due process of law. An informal complaint must simply contain a statement of the facts behind the claim. *See* 47 C.F.R. § 1.716. In many instances, those facts are vaguely stated and terse, and it is sometimes difficult for the defendant carrier to understand or appreciate the full scope of the claim. By contrast, a formal complaint must contain not just a detailed statement of facts, supported by documentation or affidavit, but a full analysis of the law, a list of all relevant documents, a list of persons with knowledge of the relevant facts, and initial discovery requests. *See* 47 C.F.R. §§ 1.720, 1.721, and 1.729. In short, a formal complaint must contain the complainant's *prima facie* case to support its claim that the defendant violated the Act or Commission regulations or orders.

If a formal complaint is not filed for several years after the informal complaint, the defendant could have a very difficult time developing the facts needed to refute the claim. The

complainant can make sure that it keeps sufficient information and knows what personnel it can tap to put together the facts in the complaint. The defendant, however, may be unable to develop an adequate defense because of the passage of time. The informal complaint may not have provided enough specific information that the defendant would know what information to retain, and relevant documents may no longer be available. Similarly, personnel who could help to develop an answer may have left or be unavailable, or their memories of the facts may have faded. As a result, the defendant could be unable to develop and file a complete or convincing answer. The proposed delay would deprive the defendant of due process, because it could not properly defend the allegations in the formal complaint.


Delays extending to one or more years between the filing of informal complaints and Commission disposal of those complaints are not uncommon, even for issues that are not controversial. There is no deadline for Commission disposition of such complaints in either the Act or Commission rules. As with the recent cases involving Verizon, final disposition may not be forthcoming for some period. The existing rule, which considers the claim to be “abandoned” if a formal complaint is not forthcoming within six months, gives certainty and finality to the process which the proposed extension eliminates. *See* 47 C.F.R. § 1.718.

In addition, while the parties are obligated to retain relevant records, if several years go by between the filing of the informal and formal complaints, key personnel may have retired to left the company, and memories of potential witnesses who remain may have dimmed. Therefore, substantial delays in filing formal complaints may make it more difficult for the parties to develop and the Commission to elicit the facts needed to reach a decision.

For these reasons, the Commission should not change that portion of section 1.718 of its rules that specifies the period when a formal complaint relates back to the filing of an informal complaint.

Respectfully submitted,

Michael E. Glover
Edward Shakin
Of Counsel


Sherry A. Ingram
1515 North Court House Road
Suite 500
Arlington, Virginia 22201-2909
(703) 351-3658

Attorney for the Verizon
telephone companies

May 16, 2002

THE VERIZON TELEPHONE COMPANIES

The Verizon telephone companies are the local exchange carriers affiliated with Verizon Communications Inc. These are:

Contel of the South, Inc. d/b/a Verizon Mid-States
GTE Midwest Incorporated d/b/a Verizon Midwest
GTE Southwest Incorporated d/b/a Verizon Southwest
The Micronesian Telecommunications Corporation
Verizon California Inc.
Verizon Delaware Inc.
Verizon Florida Inc.
Verizon Hawaii Inc.
Verizon Maryland Inc.
Verizon New England Inc.
Verizon New Jersey Inc.
Verizon New York Inc.
Verizon North Inc.
Verizon Northwest Inc.
Verizon Pennsylvania Inc.
Verizon South Inc.
Verizon Virginia Inc.
Verizon Washington, DC Inc.
Verizon West Coast Inc.
Verizon West Virginia Inc.